

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

NIKKIA L. ARCHER OLIPHANT

(b) County of Residence of First Listed Plaintiff Philadelphia
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Robert P. Cocco, P.C.,
1500 Walnut St., Ste. 900, Philadelphia, PA 19102
215-351-0200

DEFENDANTS

NEW PENN FINANCIAL, LLC

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify) _____
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. § 1692k et seq.

Brief description of cause: inaccurate credit reporting dispute

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 7/31/17 SIGNATURE OF ATTORNEY OF RECORD 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

NIKKIA L. ARCHER OLIPHANT,
v.

: CIVIL ACTION

:

:

NEW PENN FINANCIAL, LLC et al.

: NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus -- Cases brought under 28 U.S.C. §2241 through §2255. ()
- (b) Social Security -- Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration -- Cases required to be designated for arbitration under Local Civil Rule 8. ()
- (d) Asbestos -- Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management -- Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management -- Cases that do not fall into any one of the other tracks. (X)

7/31/17
(Date)


Attorney-at-law

ROBERT P. COCCO, ESQ.
Attorney for Plaintiff

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA -- DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 7404 Montour Street, Philadelphia, PA 19111Address of Defendant: 4000 Chemical Road, Ste. 200, Plymouth Meeting PA 19462.Place of Accident, Incident or Transaction: 7404 Montour Street, Philadelphia, PA 19111.

(Use Reverse Side For Additional Space)

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒RELATED CASE, IF ANY: None.

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

2. Does this case involve the same issue or factor grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes ☐ No ☒CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

B. Diversity Jurisdiction Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts1. ☐ Insurance Contract and Other Contracts2. ☐ FELA2. ☐ Airplane Personal Injury3. ☐ Jones Act-Personal Injury3. ☐ Assault, Defamation4. ☐ Antitrust4. ☐ Marine Personal Injury5. ☐ Patent5. ☐ Motor Vehicle Personal Injury6. ☐ Labor-Management Relations6. ☐ Other Personal Injury (Please specify)7. ☐ Civil Rights7. ☐ Products Liability8. ☐ Habeas Corpus8. ☐ Products Liability - Asbestos9. ☐ Securities Act(s) Cases9. ☐ All other Diversity Cases10. ☐ Social Security Review Cases11. ☒ All other Federal Question Cases
(Please specify)

ARBITRATION CERTIFICATION

(Check appropriate Category)

I, Robert P. Cocco, counsel of record do hereby certify:☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;☒ Relief other than monetary damages is sought.DATE: 7/31/17

Attorney-at-Law

61907

Attorney I. D. #

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 7/31/17

Attorney-at-Law

61907

Attorney I.D. #

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

NIKKIA L. ARCHER OLIPHANT, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. :
 :
 NEW PENN FINANCIAL, LLC dba :
 SHELLPOINT MORTGAGE SERVICING :
 :
 and :
 :
 STERN & EISENBERG, P.C., :
 Defendants. :
 :

COMPLAINT

I. Introduction

This is an action by a homeowner against her default mortgage servicer and its law firm for wrongful debt collection practices and for a proper accounting of her mortgage and for damages.

II. Venue and Jurisdiction

1. Jurisdiction over this matter is conferred upon this Court by the Fair Debt Collection Practices Act, 15 U.S.C. § 1692k(d) and 28 U.S.C. §§ 1331 (“FDCPA”).

2. Venue lies in this judicial district in that the events which gave rise to this claim, including but not limited to the mortgage loan contract, occurred here and the property which is the subject of the action is situated within this district.

III. Parties

3. Plaintiff is a natural person residing at 7404 Montour Street, Philadelphia, PA 19111 (the “property”).

4. Defendant, NEW PENN FINANCIAL, LLC d/b/a under the fictitious registered name of Shellpoint Mortgage Servicing (“Shellpoint”), is a corporation with its principal offices at 4000 Chemical Road, Ste. 200, Plymouth Meeting PA 19462 and is the servicing agent for the holder of plaintiff’s mortgage loan.

5. Defendant Stern & Eisenberg, P.C. (“Law Firm”), is a corporation and law firm engaged solely in the business of debt collection in the Commonwealth of Pennsylvania with principal offices at 1581 Main Street, Suite 200, Warrington, PA 18976. Law Firm regularly attempts to collect debts alleged to be due another and is a debt collector as defined by 15 U.S.C. §1692a(6).

IV. Factual Allegations

6. Prior to the events hereinafter described, plaintiff had an outstanding home mortgage loan serviced by SLS, LLC (“the account”).

7. In or around June 2013, Plaintiffs filed a chapter 13 bankruptcy petition in the United States Eastern District, Docket No. 13-15459, for among other financial reasons, to pay arrears due on the account.

8. SLS, on behalf of the loan’s alleged owner, Bank of New York, filed a proof of claim in plaintiff’s bankruptcy for plaintiff’s mortgage loan arrears on the account which plaintiff committed to pay through her chapter 13 plan.

9. On or about December 22, 2016, Shellpoint filed a transfer of claim giving notice it was the new servicer of the account having purchased the servicing rights from SLS, LLC.

10. On or about March 9, 2017, Law Firm sent plaintiff a debt collection notice alleging plaintiff had missed nine (9) months of post-petition monthly payments for the account

totaling over \$13,000 with other charges claimed due by Shellpoint.

11. On or about March 21, 2017, Law Firm filed on behalf of Shellpoint a “Certification of Default of Stipulation Settling the Motion for Relief” alleging again that plaintiff had missed nine (9) months of post-petition monthly payments for the account.

12. Plaintiff filed thereafter an Objection to Shellpoint’s Certification of Default alleging all monthly payments averred by Defendants as unpaid had, in fact, been paid by plaintiff.

13. On or about April 13, 2017, Plaintiff provided the Bankruptcy Court with redacted versions of her bank statements and cashed checks at Doc. 57 - Doc. 64 on the court’s docket to substantiate that all payments due during the alleged default period (“07/01/2016 to 09/01/2016” and “10/01/2016 to 02/01/2017” had, in fact, been paid by plaintiff.

14. At a hearing on or about April 13, 2017 regarding Shellpoint’s Certification of Default, plaintiff testified at length in the Bankruptcy Court that she had made all payments alleged as being in default in the certification and testified that she was worried sick about losing her home; lost 15 lbs stressing out over the situation; missed several days of work; suffered anxiety and depression as a result of the situation; sought out a physician who prescribed medication to relieve the stress; and felt terribly about not being able to perform her duties as a mother properly during this period of time.

15. On or about May 10, 2017, Defendants filed a Praecipe to Withdraw its earlier Certification of Default.

16. As a result of Defendants’ conduct, Plaintiff has and will continue to experience severe physical and mental suffering, including extreme stress and anxiety resulting in panic attacks requiring prescription medication, crying episodes, and tension headaches, the latter to a

severity requiring an emergency room visit to Einstein, loss of appetite resulting in loss of weight, and mental anguish over the false and unfair collection conduct Plaintiff experienced which placed plaintiff and her family in fear of losing their home.

V. Causes of Action

COUNT I - FAIR DEBT COLLECTION PRACTICES ACT

17. Plaintiff incorporates the allegations in all prior paragraphs by reference.

18. At the time it became the servicing agent for plaintiff's loan as described herein, Defendant Shellpoint was a debt collector within the meaning of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §1692a, in that it regularly collects debts owed to another, and the debt was asserted by Defendant to be contractually in default at the time it became the servicer of the debt.

19. Defendant Law Firm is a debt collector within the meaning of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §1692a because it regularly collects debts owed to another.

20. Proper accounting by defendants for plaintiff's mortgage loan payments would have determined that plaintiff was not in post-petition arrears on her mortgage loan account.

21. In sworn court filings in the underlying litigation as described in detail herein, Defendants have misstated to plaintiff the amounts due on the debt.

22. Consequently, at the time the collection demand was made in the aforesaid written communications, Defendants misrepresented plaintiff's legal and financial obligations regarding the mortgage loan.

23. Accordingly, Defendants violated §1692e(2)(A) by making a false representation of

the character, amount, or legal status of any debt by stating that it was in arrears and subject to foreclosure.

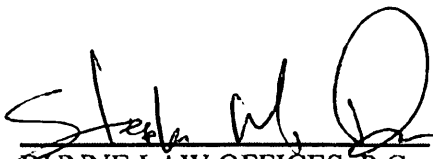
24. Defendants violated §1692f by engaging in unfair or unconscionable means to collect or attempt to collect a debt by attempting to collect a debt that was not owed and wrongly implying that the debt had caused a foreclosure upon plaintiff's home.

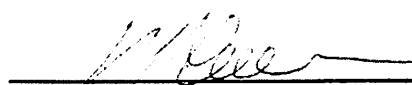
PRAYER FOR RELIEF

Plaintiff respectfully prays that judgment be entered against the Defendants for the following:

- a. Actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- b. Statutory damages pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- c. Costs and reasonable attorney's fees pursuant to 15 U.S.C. §1692k(a)(3);
- d. Equitable relief in the form of an accurate accounting of plaintiff's mortgage loan;
- e. Such other and further relief as may be just and proper.

Dated: July 31, 2017


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